

FILED

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RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

STEVEN C. ATKINS,  
Plaintiff,

No. C-03-3566 MHP

v.

COUNTY OF ALAMEDA, CITY OF ALAMEDA,  
OFFICER P. WYETH, EILEEN MCANDREW, and  
DOES 1-10,

Defendants.

**MEMORANDUM AND ORDER**  
**Motion for Summary Judgment**

On July 31, 2003, plaintiff Steven C. Atkins, proceeding *pro se*, brought this civil action against defendants the County of Alameda, City of Alameda, Eileen McAndrew, and Officer Patrick Wyeth of the Alameda Police Department (collectively "defendants"). Atkins' complaint alleges that defendants participated—individually and collectively—in the false arrest, illegal search, and malicious prosecution of plaintiff; in the process, plaintiff claims, defendants violated the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution. For these supposed violations, plaintiff seeks unspecified sums of compensatory and punitive damages, and he requests an award of costs and attorneys' fees.

On August 20, 2003, defendants filed an answer to plaintiff's complaint. On March 8, 2004, the court granted defendants' motion to stay this action pursuant to the Soldiers' and Sailors' Civil Relief Act, see 50 U.S.C. §§ 501, et seq., though the court expressly permitted two defendants (*viz.*, McAndrew and the County of Alameda) to file limited summary judgment motions. McAndrew and the County have now filed joint motions for summary judgment. The court has considered the parties' arguments fully, and for the reasons set forth below, the court rules as follows.

1 BACKGROUND<sup>1</sup>

2 On November 20, 2002, Stephanie Atkins phoned the Alameda Police Department (“APD”)  
3 to report that her father, plaintiff Steven Atkins, had been drinking heavily and had left home in his  
4 car.<sup>2</sup> Speaking with an APD emergency operator, Stephanie described the make and license number  
5 of plaintiff’s car—a Jeep Cherokee—adding that she believed plaintiff was planning to purchase  
6 more alcohol. APD dispatched Officer Wyeth to respond to Stephanie’s call. Officer Wyeth could  
7 not locate plaintiff (or plaintiff’s vehicle) in the areas surrounding plaintiff’s home, most notably at  
8 any of the neighborhood’s liquor stores. Still needing to verify Stephanie’s report, Officer Wyeth  
9 drove to the Atkins’ home. Once there, Officer Wyeth spotted a vehicle matching Stephanie’s  
10 description in the driveway of plaintiff’s home. The vehicle’s headlights were on; its engine block  
11 was warm; and it had been parked such that its bumper pressed against the garage door.

12 Wearing a micro-cassette recorder, Officer Wyeth approached plaintiff’s front door. An  
13 extensive exchange involving Officer Wyeth, plaintiff, Stephanie, and plaintiff’s wife, Sheila,  
14 followed.<sup>3</sup> Concerned for Stephanie’s safety, Officer Wyeth entered the home through an unlocked  
15 screen door. Stephanie then confirmed that she had placed the call to APD; Sheila added that  
16 plaintiff had been drinking consistently that evening. At Sheila’s request, Officer Wyeth placed  
17 plaintiff under arrest<sup>4</sup> and transported him to the APD jail,<sup>5</sup> where plaintiff spent approximately four  
18 hours in a detoxification cell. At 12:35 a.m., after being cited and after signing a promise to appear,  
19 plaintiff was released. Sheila later requested an emergency protective order.

20 Within two weeks, the district attorney of Alameda County filed charges against plaintiff for  
21 driving under the influence and refusing to take a chemical test. See Cal Veh. Code §§ 23152(a),  
22 23577. Deputy District Attorney McAndrew was assigned to the case. On December 12, 2002,  
23 plaintiff was arraigned, and he pled not guilty. Two weeks later, McAndrew offered plaintiff a plea  
24 deal, one that would allow plaintiff to accept responsibility for a first DUI offense. Plaintiff refused,  
25 offering McAndrew a “waiver” of a malicious prosecution suit instead. See McAndrew Decl., Exh.  
26 D. Approximately a month later, on January 27, 2003, McAndrew met with Stephanie. During this  
27 meeting, McAndrew learned that neither Sheila nor Stephanie wished to proceed with the  
28

1 prosecution and that neither wanted to testify against plaintiff. Citing insufficient evidence, the  
2 district attorney dismissed the criminal action on the same day; plaintiff was immediately notified.

3 Approximately six months later, plaintiff filed a complaint in this court, alleging a myriad of  
4 civil rights violations and seeking unspecified amounts of compensatory and punitive damages. See  
5 42 U.S.C. § 1983. On March 8, 2004, the court stayed this action, pursuant to the Soldiers' and  
6 Sailors' Civil Relief Act, see 50 U.S.C. §§ 501, et seq., expressly permitting defendants McAndrew  
7 and the County of Alameda to file limited summary judgment motions. McAndrew and the County  
8 have now filed related motions for summary adjudication, arguing, *inter alia*, that they are absolutely  
9 immune from suit.

10  
11 LEGAL STANDARD

12 Under Federal Rule of Civil Procedure 56, summary judgment shall be granted “against a  
13 party who fails to make a showing sufficient to establish the existence of an element essential to that  
14 party’s case, and on which that party will bear the burden of proof at trial . . . since a complete failure  
15 of proof concerning an essential element of the nonmoving party’s case necessarily renders all other  
16 facts immaterial.” Celotex Corp. v. Catrett, 477 U.S. 317, 322–23 (1986); Fed. R. Civ. P. 56(c).  
17 When a party makes a summary judgment motion, that party bears the initial burden of identifying  
18 those portions of the record that demonstrate the absence of a genuine issue of material fact. To  
19 discharge this burden, the moving party must show that the nonmoving party has failed to disclose  
20 the existence of any “significant probative evidence tending to support the complaint.” First Nat’l  
21 Bank v. Cities Serv. Co., 391 U.S. 253, 290 (1968). If the moving party satisfies this preliminary  
22 hurdle, the burden then shifts to the nonmoving party to “go beyond the pleadings, and by her own  
23 affidavits, or by the ‘depositions, answers to interrogatories, and admissions on file,’ designate  
24 ‘specific facts showing that there is a genuine issue for trial.’” Celotex Corp., 477 U.S. at 324  
25 (citations omitted).

26 Not all disputes that arise in the course of litigation constitute genuine issues of material fact.  
27 A dispute about a material fact is genuine—and thus adequate to survive a motion for summary  
28 judgment—“if the evidence is such that a reasonable jury could return a verdict for the nonmoving

1 party.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Mere allegations or  
2 unsubstantiated denials do not, without more, generate a genuine issue of material fact. See  
3 Gasaway v. Northwestern Mut. Life Ins. Co., 26 F.3d 957, 960 (9th Cir. 1994). When considering  
4 motions for summary judgment, the court views the facts—and the inferences drawn therefrom—in  
5 the light most favorable to the party opposing the motion. See T.W. Elec. Serv., Inc. v. Pacific Elec.  
6 Contractor’s Ass’n, 809 F.2d 626, 631 (9th Cir. 1987). The court does not, at this juncture, make  
7 credibility determinations. See Anderson, 477 U.S. at 249.

## 8 9 DISCUSSION

10 It is now axiomatic that prosecutors are “absolutely immune from liability under [42 U.S.C.]  
11 section 1983 for their conduct in initiating a prosecution and in presenting the State’s case insofar as  
12 that conduct is intimately associated with the judicial phase of the criminal process.” Burns v. Reed,  
13 500 U.S. 478, 486 (1991) (citing Imbler v. Pachtman, 424 U.S. 409, 431 (1976)) (internal quotation  
14 marks omitted); see also Roe v. City and County of San Francisco, 109 F.3d 578, 583 (9th Cir.  
15 1997). This “absolute immunity” protects prosecutors “from liability for failure to investigate the  
16 accusations against a defendant before filing charges,” and it shields prosecutors from suit for the  
17 performance of so-called “traditional prosecutorial duties”—e.g., trial preparation and decisions  
18 about whether or not to prosecute. See Broam v. Bogan, 320 F.3d 1023, 1028–29 (9th Cir. 2003)  
19 (elaborating the distinction between “absolute” and “qualified” immunity, the latter of which applies  
20 where a prosecutor is performing purely “investigatory or administrative” functions) (citing  
21 O’Connor v. Nevada, 686 F.2d 749, 750 (9th Cir. 1982)); Roe, 109 F.3d at 583 (“There can be no  
22 question that the nature of the decision not to prosecute is intimately associated with the judicial  
23 phase of the criminal process.”).

24 There is no question that absolute prosecutorial immunity covers McAndrew’s conduct in  
25 this instance. Without exception, McAndrew’s actions were “intimately associated with the judicial  
26 phase” of the overall criminal process: She oversaw plaintiff’s arraignment; she offered plaintiff a  
27 plea bargain (and received a strange counter-offer in return); she met with a key witness; and she  
28 opted *not* to prosecute when faced with evidence insufficient to succeed at trial. During oral  
argument, plaintiff attempted (for the first time) to concoct a “conspiracy” claim from McAndrew’s  
conduct. But McAndrew’s actions do not give rise to a “conspiracy.” Rather, such activities are

1 central to the execution of a prosecutor's core judicially-related duties, and they are precisely the  
2 kind of activities absolute prosecutorial immunity is meant to shield.<sup>6</sup> See, e.g., Radcliffe v.  
3 Rainbow Construction Co., 254 F.3d 772, 782 (9th Cir. 2001) ("A prosecutor's activities in  
4 connection with the preparation and filing of charging documents . . . are protected by prosecutorial  
5 immunity.") (citing Kalina v. Fletcher, 522 U.S. 118, 129 (1997)); see also Broam, 320 F.3d at 1029.  
6 It follows that McAndrew is absolutely immune from suit in this instance, whatever her motives and  
7 whatever the overall effect of her conduct. See id. ("If the action was part of the judicial process, the  
8 prosecutor is entitled to the protection of absolute immunity *whether or not he or she violated the*  
9 *civil plaintiff's constitutional rights.*") (citing Scheuer v. Rhodes, 416 U.S. 232, 242 (1974);  
10 emphasis added); In re Gruntz, 202 F.3d 1074, 1086 n.13 (9th Cir. 2000) ("[W]e have eschewed  
11 general examination of prosecutorial motives.") (en banc). McAndrew's motion for summary  
12 judgment must be granted accordingly.

13 The County's related motion for summary adjudication must also be granted, albeit for an  
14 importantly different reason. As McAndrew and the County correctly observe, plaintiff's claims  
15 against the County are based on—and, in a sense, derivative of—plaintiff's untenable claims against  
16 McAndrew. For this reason, apparently, defendants conclude that McAndrew's absolute immunity  
17 protects the County as well. To buttress this conclusion, defendants cite only a single *state* law case  
18 and a provision of *state* statutory law. See Gensburg v. Miller, 31 Cal. App. 4th 512, 525 (Cal. App.  
19 1994); Cal. Gov't Code § 815.2(a).<sup>7</sup>

20 What *state* law says, however, is inapposite here. The Ninth Circuit has long reminded that  
21 "[i]mmunity under [section] 1983 is governed by *federal* law; state law cannot provide immunity  
22 from suit for federal civil rights violations." Id. (emphasis added; citing, e.g., Martinez v. California,  
23 444 U.S. 277, 284 (1980)). As a matter of *federal* law, "[t]here are [] no personal immunities  
24 available vicariously or otherwise to municipal actors under [section] 1983." Wallis v. Spencer, 202  
25 F.3d 1126, 1143–44 (9th Cir. 2000) (discussing the many different scopes of state and federal  
26 immunity). "The County," put simply, "is not protected by [McAndrew's] [] immunity." Cruz v.  
27 Kauai County, 279 F.3d 1084, 1067 n.1 (9th Cir. 2002) (citing Owen v. City of Independence, 445  
28 U.S. 622, 638 (1980)).<sup>8</sup> If the County is deserving of summary adjudication, then, it must be for a  
different reason.

A different reason pertains here. Decades ago, the Supreme Court held that "a local  
government may not be sued under [section] 1983 for an injury inflicted solely by its employees or

agents.” Monell v. Department of Social Services, 436 U.S. 658, 694 (1978); see also McMillian v. Monroe County, 520 U.S. 781, 783 (1997). “Instead,” the Supreme Court noted, a municipal entity may be liable under section 1983 only where the individual employee is executing official “policy or custom.” Id.; see also Brass v. County of Los Angeles, 328 F.3d 1192, 1198 (9th Cir. 2003). Plaintiff has adduced no evidence to suggest that his putative injuries were “inflicted” by anyone—or anything—other than prosecutor McAndrew. Id. Nor has plaintiff proffered anything to show that a particular County “policy or custom” gave rise to any deprivation of his constitutional rights. Id. If anything, plaintiff has demonstrated that the County has a “policy” of withdrawing criminal charges when pivotal witnesses no longer wish to testify and when full prosecution would be otherwise injudicious. Such a “policy” does not give rise to a constitutional violation, and it does not allow plaintiff to survive the County’s motion for summary judgment. Id.

CONCLUSION

For the foregoing reasons, defendants’ motions for summary judgment are GRANTED.  
IT IS SO ORDERED.

Date:

April 29, 2004



MARILYN HALL PATEL

Chief Judge

United States District Court

Northern District of California

ENDNOTES

1. Unless otherwise noted, all facts in this section have been culled from the parties' moving papers.
2. Plaintiff chides defendants for relying on a "myriad of exhibits they portend [sic] to be factual," adding that all the relevant "exhibits would be inadmissible" as "falsified," "altered," and "fabricated." See Pl.'s Opp., at p. 2. But plaintiff adduces nothing to substantiate his claims of falsification and / or alteration, and both his reasoning and his conclusion are untenable. Defendants' motion depends exclusively on admissible information, much of which grows from McAndrew's "first hand knowledge of the facts."
3. The details of this exchange are undeniably central to the viability of plaintiff's many causes of action. But as important as it will eventually be to explore these facts in some detail, it is not necessary to do so here. Defendants' motion for summary judgment depends on stipulated facts and straightforward questions of law. The court will not comment on any other factual or legal questions here.
4. The parties dispute whether Sheila Atkins asked Officer Wyeth to place plaintiff under "citizen's arrest." Relying on Officer Wyeth's arrest report, defendants contend that Sheila did so ask; plaintiff, by contrast, attaches to his opposition brief a declaration attesting that Sheila did not "make a Warrantless, Private Citizens [sic] Arrest of[] Steven Carl Atkins." See Pl.'s Opp., Exh. A. This declaration may create a question of fact regarding *Officer Wyeth's* conduct, but it does not impact the *legal* question of prosecutorial immunity. No aspect of this fact dispute impacts the court's consideration of the instant motion, and it does not create a genuine issue of material fact vis-a-vis McAndrew's (and the County's) amenability to suit.
5. In his opposition brief, plaintiff posits as "undisputed" the fact that he "was illegally arrested without a warrant in his home." See Pl.'s Opp., at p. 1. Though defendants leave this assertion uncontested in their reply brief, plaintiff's claim is far from "undisputed," at least to the extent that the plaintiff claims the arrest was "illegal."
6. Plaintiff's claim that "the 'Judicial Phase' was not yet started" (so McAndrew's conduct was not shielded by absolute immunity) bespeaks a misreading of the relevant caselaw and defines "judicial phase" in an unduly restrictive and legally unsustainable way. See, e.g., Radcliffe, 254 F.3d at 782 ("A prosecutor's activities in connection with the preparation and filing of charging documents . . . are protected by prosecutorial immunity.").
7. In their reply brief, defendants restate this inapposite *state* law claim, adding a citation to Witkin's treatise on agency and employment law. See Def.'s Reply, at 1-3.
8. This rule keeps municipal liability under section 1983 largely symmetric. Municipal entities cannot claim—or derive—immunity from individual employees, but they cannot be held liable under "the doctrine of *respondeat superior* . . . under [section] 1983 for the constitutional torts of their employees," either. See Brass v. County of Los Angeles, 328 F.3d 1192, 1198 (9th Cir. 2003) (discussing the effect of Monell on Monroe v. Pape, 365 U.S. 167 (1961)).